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IN THE

Supreme Court of the United States

BANK OF AMERICA CORP., ET AL., PETITIONERS,

v.

CITY OF MIAMI, FLORIDA, RESPONDENT.

WELLS FARGO & CO. ET AL., PETITIONERS,

v.

CITY OF MIAMI, FLORIDA, RESPONDENT.

On Writs of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982) 4

Mayor and City Council of Baltimore v. Wells Fargo N.A., 2011 WL 1557759 (D. Md. Apr. 22, 2011) 16

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William Apgar, et al., Homeownership Preservation Foundation, *The Municipal Costs of Foreclosures: A Chicago Case Study* (Housing Finance Policy Research Paper Number 2005-1, 2005) ..... *passim*

Robert B. Avery, et al., *The 2006 HMDA Data*, 93 Fed. Res. Bull. A73 (Dec. 2007) 8

Robert B. Avery, et al., *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act*, 98 Fed. Res. Bull. 6 (Dec. 2012) 5

Ben Bernanke, Chairman, Board of Governors of the Federal Reserve System, Remarks at the Operation HOPE Global Financial Dignity Summit, Atlanta, Georgia (Nov. 15, 2012) 10

Debbie Gruenstein Bocian, et al., Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) 5, 8

Debbie Gruenstein Bocian, et al., Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (2006) 5

John Y. Campbell, et al., *Forced Sales and House Prices* (Nat'l Bureau of Econ. Research, Working Paper No. 14866, 2009) 12

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U.S. Department of Housing & Urban Development & U.S. Department of Treasury Task Force on Predatory Lending, *Curbing Predatory Home Mortgage Lending* (2000).....8

Alan C. Weinstein, *Current and Future Challenges to Local Government Posed by the Housing and Credit Crisis*, 2 Alb. Gov't L. Rev. 259 (2009).....11

Bob Winthrop & Rebecca Herr, *Determining the Costs of Vacancies in Baltimore*, Gov't Fin. Rev., June 2009.....19, 20

Stephan Whitaker, Fed. Res. Bank of Cleveland, *Foreclosure-Related Vacancy Rates* (2011).....17

INTEREST OF *AMICI CURIAE*[1]

Amici are not-for-profit organizations whose missions are to advance the interests of cities, counties, and other local governments. *Amici* file this brief to explain, with contemporary empirical evidence, how the economic effects of banks' discriminatory lending practices injure local governments in ways that give rise to standing to seek redress under the Fair Housing Act.

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The National League of Cities (NLC) is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with 49 State municipal leagues, NLC serves as a national advocate for the more than 19,000 cities, villages, and towns it represents.

The U. S. Conference of Mayors (USCM), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,200 cities at present. Each city is represented in the USCM by its chief elected official, the mayor.

The International City/County Management Association (ICMA) is a nonprofit professional and educational organization of over 9,000 appointed chief executives and

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[1] No counsel for a party authored this brief in whole or in part and no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of *amicus* briefs are on file with the Clerk.

assistants serving cities, counties, towns, and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.

The International Municipal Lawyers Association (IMLA) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 3,000 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

Amici file this brief to provide the Court with evidence of the direct economic harm that discriminatory lending practices inflict on cities and counties: a reduction in property tax revenue and increasing demand for government services. As other *amici* demonstrate, discriminatory lending practices also perpetuate and exacerbate the social evils of segregation and inequality that Congress targeted in the Fair Housing Act. *See* Br. of the City and County of San Francisco, et al.; Br. of Nat'l Fair Housing Alliance, et al.

INTRODUCTION AND SUMMARY OF ARGUMENT

For almost four decades, it has been clear that the Fair Housing Act affords cities a crucial remedy for redressing the economic and social costs of discriminatory housing practices. In *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 95 (1979), a municipality alleged that it "ha[d] been injured by having [its] housing market . . . wrongfully and illegally manipulated" by the steering of prospective African-American homeowners to—and white homeowners away from—a target neighborhood. This Court held that the village had standing to sue under the FHA because the "[defendants'] steering practices significantly reduce[d] the total number of

buyers in the . . . housing market" and because "a significant reduction in property values directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the costs of local government and to provide services." *Id.* at 110–11.

This Court's precedent retains its vitality. When Congress amended the FHA in 1988, it established a single remedial mechanism for parties "aggrieved" by discriminatory housing practices, defining "aggrieved" to adopt "existing law" and "reaffirm the broad holding[]" of *Gladstone*. H.R. Rep. No. 100-711 at 23 (1988). The unique injuries to cities that this Court recognized in *Gladstone* persist today. As *amici* explain below, abundant empirical evidence demonstrates that discriminatory lending practices generate disproportionate residential foreclosures in minority communities, inflicting concrete and demonstrable economic injuries on municipalities in at least two distinct forms. First, discriminatory lending reduces cities' tax revenue by shrinking their tax base. Second, cities are forced to spend more on municipal services to address the consequences of discriminatory lending. As in *Gladstone*, these economic injuries to municipalities are cognizable under the FHA.

The banks' contention that this well-documented municipal harm falls outside the FHA's protection because it is merely "incidental" to their discriminatory lending is unfounded. Bank of Am. Br. 37; *see also* Wells Br. 29. *Gladstone* made clear that losses to cities' tax receipts and new burdens on their municipal budgets caused by housing discrimination are independent injuries cognizable under the FHA. 441 U.S. at 110–11, 115. Indeed, a few years later, this Court confirmed that—like cities—organizational plaintiffs whose resources for fair-housing counseling and referrals had been "drain[ed]" by housing

discrimination could seek a remedy under the FHA. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 375–79 (1982). As this brief explains, racially discriminatory mortgages inflict upon cities the same class of harms that established standing in *Gladstone* and *Havens*.

ARGUMENT

Discriminatory lending uniquely harms cities.

Cities' and counties' standing to sue under the FHA arises from the well-documented process through which discriminatory lending practices compel African-American and Latino homeowners to finance homes at higher rates and less favorable terms than similarly situated white homeowners. This process—including "redlining" (refusing to extend mortgage credit to borrowers in minority neighborhoods) and "reverse redlining" (targeting minority borrowers with predatory loans)—causes a disproportionate number of foreclosures of minority-owned homes. Increased foreclosures, in turn, predictably shrink cities' tax revenues and increase expenses for local government services.

A. Discriminatory lending practices increase foreclosures.

The scourge of racially discriminatory lending is well established. Data compiled by the Federal Reserve Board under the Home Mortgage Disclosure Act shows that, controlling for creditworthiness, African-American and Latino borrowers still account for a disproportionate share of high-interest home-purchase and refinance loans.[2] For example, even after controlling for income and other underwriting factors, African-American

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[2] Robert G. Schwemm & Jeffrey L. Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 Harv. C.R.-C.L. L. Rev. 375, 398 (2010).

borrowers were 6.1% to 34.3% more likely than similarly situated white borrowers, and Latinos were 28.6% to 141.9% more likely than similarly situated white borrowers, to receive higher-interest mortgage rates.[3] African-American and Latino borrowers are also more likely to receive loans with riskier features, such as prepayment penalties.[4]

Good credit does not spare minority borrowers from discrimination: African-American and Latino borrowers with FICO scores over 660 received high-interest loans more than three times as often as white borrowers with similar profiles.[5] Minorities are also more likely to be rejected for market-rate loans (and refinancing), after controlling for other factors—further pushing non-white borrowers into high-cost, high-risk loan categories.[6] These racial disparities persist across regions and economic cycles.[7] The map below, generated for Baltimore's FHA litigation against Wells Fargo, shows that high-cost purchase and refinance loans are concentrated in neighborhoods where large majorities of homeowners are African American.

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[3] Debbie Gruenstein Bocian, et al., Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* 16–18 (2006).

[4] Debbie Gruenstein Bocian, et al., Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* 21–23 (2011).

[5] *Id.* at 21.

[6] Wei Li & Laurie Goodman, Urban Institute, *A Better Measure of Mortgage Application Denial Rates* 4 (2014).

[7] Robert B. Avery, et al., *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act*, 98 Fed. Res. Bull. 6 (Dec. 2012), at 3.

Geographic distribution of high-cost Wells Fargo loans in African-American and white neighborhoods in Baltimore from 2004–2007.[8]



[8] Third Am. Compl. at 30, *Mayor and City Council of Baltimore v. Wells Fargo N.A.*, No. 08-cv-00062, 2011 WL 1557759 (D. Md. Oct. 21, 2010), ECF 176 ("Baltimore Compl.").

This starkly disparate mortgage-pricing pattern is the foreseeable effect of banks' racially discriminatory lending practices. Ample evidence shows that banks have unlawfully steered African-American and Latino borrowers to loans structured to be more onerous for homeowners, but more profitable for lenders. Corporate policies directly led to a wide range of racially targeted unfair and deceptive lending practices. These practices include charging excessive fees, imposing high interest rates not justified by borrowers' creditworthiness, misleading borrowers as to prepayment penalties, and deceiving minority borrowers about certain categories of particularly risky loans, drawing them in with low teaser rates that soon balloon.[9]

In addition, banks' commission and fee structures encouraged lending agents to intentionally target African-American and other non-white borrowers for costly, onerous, and deceptive loans.[10] In the Baltimore litigation, former loan officers testified that "the effect of Wells Fargo's compensation system for subprime loans was to put 'bounties' on minority borrowers."[11] The officers were even specifically "instructed by management to refer borrowers who could have qualified for more advantageous prime or FHA loans to the subprime unit."[12] In exchange, individual loan officers at Wells Fargo were rewarded with "lavish gifts and trips" and more than half a million dollars in annual compensation.[13]

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[9] *See id.* at ¶¶ 26–68; JA218 (Proposed First Am. Compl. at ¶¶ 72–74); JA 205–08 (Proposed First Am. Compl. at ¶¶ 46–49).

[10] JA192–93, 215–17 (Proposed First Am. Compl. at ¶¶ 14, 62–72); Baltimore Compl. at ¶¶ 65–71.

[11] Baltimore Compl. at ¶¶ 59.

[12] Baltimore Compl. at ¶¶ 57.

[13] Baltimore Compl. at ¶¶ 59–60.

Not surprisingly, costlier and risker loans result in increased foreclosures. Regression analysis by the Federal Reserve confirms that higher-price lending has fairly large "independent predictive value for loan performance beyond that of the economic factors."[14] Banks' patterns and practices of targeting African-American and Latino communities with racially discriminatory loans have disproportionately increased foreclosures on minority homeowners and their communities.[15] In Miami, for example, risky, high-interest Bank of America loans to African Americans and Latinos are, respectfully, 2.744 and 2.861 times more likely to result in foreclosure than non-predatory loans made to similar white borrowers.[16] And in Baltimore, Wells Fargo loans in predominantly African-American neighborhoods—targeted with unnecessarily costly and risky loans—are three times as likely to result in foreclosure as a loan in a predominantly white neighborhood.[17] In cities across the country, lending discrimination has afflicted minority homeowners with direct loss of their homes, or substantial loss of wealth from decreases in home equity.[18]

As demonstrated in the map below (from Baltimore's FHA litigation), Wells Fargo foreclosures were concentrated in the same predominantly African-American neighborhoods as the bank's high-cost mortgages.

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[14] Robert B. Avery, et al., *The 2006 HMDA Data*, 93 Fed. Res. Bull. A73, A107 (Dec. 2007), http://bit.ly/2dIx8LA.

[15] U.S. Dep't of Hous. & Urban Dev. & U.S. Dep't of Treasury Task Force on Predatory Lending, *Curbing Predatory Home Mortgage Lending* 45–49 (2000), http://bit.ly/2dOh4Fh.

[16] JA231–32 (Proposed First Am. Compl. at ¶¶ 103–05).

[17] Baltimore Compl. at ¶¶ 39–42.

[18] Bocian, *Lost Ground*, *supra* note 4, at 31.

Geographic distribution of Wells Fargo foreclosures in African-American and white neighborhoods in Baltimore, 2000–2009.[19]



[19] Baltimore Compl. at 17.

But the economic harm from discriminatory lending is not confined to the devastating loss of an individual homeowner's most important asset, or even neighbors' plummeting equity in family homes on foreclosure-scarred city blocks. As this Court recognized in *Gladstone* and confirmed in *Havens*, housing discrimination also inflicts *economic* damage on municipalities that is cognizable—and compensable—under the FHA.

The cost to cities of the foreclosure crisis is undisputed among experts. As then-Chairman of the Federal Reserve Ben Bernanke reflected, "foreclosures can inflict economic damage beyond the personal suffering and dislocation that accompany them."[20] When foreclosed properties "sit vacant," they "deteriorate from neglect"—"adversely affecting not only the value of the individual property but the values of nearby homes as well." *Id.* As Bernanke explained, these "[c]oncentrations of foreclosures have been shown to do serious damage to neighborhoods and communities, reducing tax bases and leading to increased vandalism and crime." *Id.* The "foreclosure wave," he concluded, has had a ripple effect far beyond its impact on individual homeowners, "especially when concentrated in lower-income and minority areas." *Id.*

The only question, for purposes of FHA standing, is whether a city plaintiff has sufficiently alleged economic harm from unlawful housing discrimination in the particular circumstances of the case—and ultimately, at trial, the adequacy of that proof. As *amici* show below, the economic effects of mortgage lending discrimination may be demonstrated with a high degree of precision.

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[20] Ben Bernanke, Chairman, Board of Governors of the Fed. Res. Sys., Remarks at the Operation HOPE Global Financial Dignity Summit, Atlanta, Georgia (Nov. 15, 2012) (prepared remarks available at http://bit.ly/2dxSDhO).

B. Discriminatory lending "directly injures a municipality by diminishing its tax base."

There is little question that, when lending discrimination causes foreclosures, it "directly injures" cities by reducing property tax revenues. *Gladstone*, 441 U.S. at 110–11. And as in *Gladstone*, falling property tax revenues undermine cities' "ability to bear the costs of local government and to provide services," *id.* at 111, forcing cities to slash services and impose layoffs and hiring freezes.[21] Foreclosures choke city tax receipts through various mechanisms. Indeed, the foreclosure-generated tax loss to cities from discriminatory lending is more direct—and easier to trace—than the downward deflection in property prices from decreased demand "attributable to racial steering [from] an exodus of white residents" that this Court held actionable in *Gladstone*. *Id.* at 110.

1. As an immediate and first-order effect, the foreclosure process leads to tax delinquencies and defaults, depriving cities of revenue from the property. This process may precede foreclosure, as "homeowners who are in default on their mortgages or in foreclosure are often also defaulting on their property taxes or are in tax foreclosure."[22] Sure, a city may place a tax lien on the property. But lien sales "can take months or years to complete"—often at significant ministerial and administrative cost—and "even then the municipality may have to settle for less than full repayment."[23] Even if the

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[21] Christiana McFarland & William McGahan, National League of Cities, *Housing Finance and Foreclosures Crisis: Local Impacts and Responses* 2 (2008), http://bit.ly/2dBPb45.

[22] Alan C. Weinstein, *Current and Future Challenges to Local Government Posed by the Housing and Credit Crisis*, 2 Alb. Gov't L. Rev. 259, 266 (2009).

[23] William Apgar, et al., Homeownership Pres. Found., *The Mu-*

lender satisfies a tax lien upon completion of a foreclosure, the loss in revenue when the property is "stuck in various stages of the foreclosure process" can be substantial.[24]

When a foreclosed home is abandoned and deteriorates to the point where it must be demolished, the city's tax base is immediately diminished by the home's assessed value. Demolitions by the City of Cleveland, for example, reduced its tax base by an estimated $400,000 in a single year.[25] When demolished foreclosures are the product of discriminatory lending, cities are clearly and directly "aggrieved" under the FHA. 42 U.S.C. § 3602(i)(1).

2. Second, lenders typically sell foreclosed homes at a discount to liquidate them more quickly. Studies of foreclosure sales in Massachusetts, for example, show an average foreclosure discount of 28% of a house's value.[26] If the "haircut" price is used to assess the value of the property, the municipalities' tax receipts will fall.[27] And the increased supply of bank-owned homes on the market drives the price of all homes downward, diminishing the city's tax base. *Cf. Gladstone*, 441 U.S. at 110 (if

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nicipal Costs of Foreclosures: A Chicago Case Study 11 (Housing Finance Policy Research Paper Number 2006-1, 2006), http://bit.ly/2dw6ncX.

[24] *Id.* at 32.

[25] Community Research Partners & ReBuild Ohio, *$60 Million and Counting: the cost of vacant and abandoned properties to eight Ohio cities* 5-23 (Feb. 2008), http://bit.ly/2dO907y.

[26] John Y. Campbell, et al., *Forced Sales and House Prices* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 14866, 2009) http://bit.ly/2dW31Sc.

[27] Keith R. Ihlanfeldt & Tom Maycock, *Foreclosures and Local Government Budgets*, 53 Regional Sci. & Urb. Econ. 135 (2015), http://bit.ly/2dw2A1D.

housing discrimination practices "significantly reduce the total number of buyers . . . prices may be deflected downward"). Detroit's municipal bankruptcy highlights the broader consequences of predatory lending and the resulting foreclosures. "By 2012, banks had foreclosed on 100,000 homes [in Detroit], which drove down the city's total real estate value by 30 percent and spurred a mass exodus of nearly a quarter million people."[28]

3. Foreclosure-caused vacancies drive down the value of both foreclosed and neighboring properties. This well-documented process "directly injures a municipality by diminishing its tax base." *Gladstone*, 441 U.S. at 110–11. Cities across the country have established their foreclosure-attributable injury with considerably more reliability than the losses alleged by the municipality in *Gladstone*.[29]

Econometric techniques permit cities to isolate the negative price impact of foreclosures from other factors, and accurately estimate the extent to which a reduction in a municipal tax base derives from a lender's discriminatory lending practices. Economists use hedonic regression analysis, a statistical method that allows them to "estimate th[e] marginal contributions" of various factors to the final price of a good, including the value of a house.[30] These methods can "show the independent

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[28] Laura Gottesdiener, *Detroit's Debt Crisis: Everything Must Go*, Rolling Stone, June 20, 2013.

[29] In theory, a municipality could offset the foreclosure-induced erosion of its tax base by increasing the property tax rate. But there are good reasons cities don't do this: the political consequences of raising taxes—and fear of capital flight to less tax-burdened municipalities—constrain cities' rate setting. *See* Keith R. Ihlanfeldt & Kevin Willardsen, *The millage rate offset and property tax revenue stability*, 46 Regional Sci. & Urb. Econ. 167, 175 (2014).

[30] Jan de Haan & Erwin Diewert, *Handbook on Residential*

influence on housing prices of [various] physical and neighborhood characteristics"—including nearby foreclosures and abandoned properties.[31] While hedonic regression analysis does not pinpoint the various *causes* for the decline in foreclosed and neighboring homes, it is a well-established approach to estimating—and isolating—foreclosures' harmful *effects* on home prices.[32]

Economic studies of residential markets in cities across the country reliably establish that foreclosures harm a city's tax base because they cause a decline in neighboring property prices. An extensive study of the effect of foreclosures on property values in Chicago, for example, used hedonic regression techniques to control for over 40 characteristics of properties (size, construction, etc.) and neighborhoods (population density, income, race, etc.). The study concluded that each foreclosure in Chicago is responsible for declines of between 0.9% and 1.136% in the value of single homes within an eighth of a mile, with further decreases of 0.325% per foreclosures in the band from an eighth to a quarter

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Property Prices Indices 50 (2013), http://bit.ly/2dItjG6.

[31] Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy* (Community Org. Working Papers Vol. 10, 2004), http://bit.ly/2dP93Pv.

[32] The mechanisms for foreclosure-induced reduction in property values vary by neighborhood and community, but include declining maintenance by financially strapped households, vacancy-effects on neighboring properties, downward pressure on neighboring values from discounted "fire sales," and reduced investment as a result of expectation of future decline in values associated with foreclosures. *See* Decl. of Richard P. Voith, Baltimore Compl., ECF 176-20.

mile.[33] In low- and moderate-income neighborhoods, the effects of each additional foreclosure are even larger, with average declines of 1.44% for each additional foreclosure within an eighth of a mile.[34]

Importantly, the effect of each additional foreclosure is cumulative. The reduction in property values is especially steep in minority communities, where discriminatory lending practices have led to a clustering of foreclosures.[35] A study of property sales and foreclosure filings in New York City—a high-density and rapidly appreciating market—concluded that houses near at least three properties where a foreclosure notice had been filed "sell at a discount."[36] The authors found a significant "threshold effect," indicating that the discriminatory patterns of foreclosures in minority communities affect property values—and city budgets—in a way that evenly distributed foreclosures would not.

Regression analyses in other cities confirm these findings. A 2004 study of abandoned homes—a category associated with foreclosures—in Philadelphia found that each home within 150 feet of an abandoned home experienced an average decrease in sales price of $7,627; homes within 150 to 299 feet declined in value by $ 6,810; and homes within 300 to 499 feet declined in value by $3,542.[37] And a study of single family homes in Dallas County, Texas, estimated that each additional foreclo-

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[33] Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 Housing Pol'y Debate 57, 69 (2006).

[34] *Id.* at 72.

[35] Apgar, *supra* note 23, at 2, 13.a

[36] Jenny Schuetz, et al., *Neighborhood Effects of Concentrated Mortgage Foreclosures*, 17 J. Housing Res. 306, 307 (2008).

[37] Shlay & Whitman, *supra* note 31, at 21.

sure within 250 feet decreases the selling price of a property by approximately $1,666, even after controlling for local prevailing trends in home prices, local school quality, and other factors.[38] Thus, accepted econometric techniques have isolated and demonstrated the real economic harm that foreclosures have caused in in diverse communities across the country.

Cities have successfully marshaled these analytical techniques to reliably isolate and demonstrate the harm that reduced property tax revenues have caused in specific limited geographic areas—or even particular city blocks. In recent FHA litigation by the City of Baltimore, for example, the city pinpointed damages from lost property tax revenue in thirty-seven "sub-neighborhoods," comprised of two-block by two-block areas where at least one-third of the foreclosed properties were from Wells Fargo loans.[39] The data to establish such "property-specific damages" is readily available from public and bank records.[40]

C. Discriminatory lending threatens cities' "ability to bear the costs of local government and to provide services."

In addition to depriving cities and counties of property tax revenues, foreclosures caused by discriminatory lending practices "directly injure[]" cities because they must provide substantially more public services—and expend far more public funds—to maintain the homes, which both residents and banks so often abandon. *Gladstone*, 441 U.S. at 111. The burdens on cities run the

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[38] Tammy Leonard & James Murdoch, *The Neighborhood Effects of Foreclosures*, 11 J. Geographical Sys. 317 (2009).

[39] Baltimore Compl. at ¶¶ 320–27.

[40] *Mayor and City Council of Baltimore v. Wells Fargo N.A.*, 2011 WL 1557759 at *3 n.2 (D. Md. Apr. 22, 2011).

gamut of local government services—from administrative and judicial expenditures, to police, fire, sanitation, and demolition costs arising from vacancies and abandonment.[41] Econometric analysis and public records permit cities to reliably estimate these expenditures.

An extensive study of foreclosures in Chicago, for example, "isolates 26 separate costs incurred for the provision of 'foreclosure related services' . . . undertaken by 15 separate governmental units that are part of the overall municipal infrastructure underlying the foreclosure process."[42] Under the most straightforward scenario—a foreclosure resulting in no vacancy, and where the lender covers delinquent property taxes—costs to the city amount to $27. In auction sales of a vacant, secured property with no code violations, costs rise to $430.[43] Thereafter, costs rapidly spiral upward. Vacant and unsecured property foreclosures require inspection, boarding, and other maintenance and public-safety expenses, as well as administrative or judicial collection processes. Researchers estimated that these properties required municipal expenditures of between $5,358 and $7,020.[44] The cost of responding to criminal activity adds thousands more to the foreclosure-related municipal expenses. When both the buyer and lender abandon their interests in a distressed property that succumbs to fire, the city may incur costs of up to $34,199.[45]

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[41] Stephan Whitaker, Fed. Res. Bank of Cleveland, *Foreclosure-Related Vacancy Rates* (2011) (noting that "homes that have been through a sheriff's sale have very high vacancy rates for a year and a half afterward"), http://bit.ly/2disi4n.

[42] Apgar, *supra* note 23, at 1.

[43] *Id.* at 24.

[44] *Id.* at 24–25.

[45] *Id.* at 26.

Summary of Municipal Costs for Alternative Foreclosure Scenarios in Chicago.[46]

Never vacant	**$27**
Vacant/secured	$430
Vacant/unsecured, administrative hearing held	$5,358
Vacant/unsecured, administrative hearing held, modest criminal activity	$5,673
Vacant/unsecured, administrative hearing held, significant criminal activity	$6,753
Vacant/unsecured, housing court proceeding held	$7,020
Vacant/unsecured, demolished after court proceeding, modest criminal activity	$13,324
Vacant/unsecured, demolished in fast track process, modest criminal activity	$13,452

The tendency of foreclosures to "cluster" in minority neighborhoods—as a result of discriminatory lending practices—exacerbates their direct safety and public-health costs to cities. Police officials in Chicago, for example, cited the damage to quality of life from empty, foreclosed properties, "including gang activity, drug dealing, prostitution, arson, rape, and murder."[47] Eco-

[46] *Id.* at 23.

[47] *Id.* at 10.

nomic studies reveal a strong correlation between foreclosures and crime, with one group of researchers finding that an increase of 2.8 foreclosures for every 100 owner-occupied properties corresponds to an increase in neighborhood violent crime of approximately 6.7%.[48]

As a result of the foreclosure epidemic in Baltimore, abandoned homes have become magnets for drug deals and theft.[49] One resident, for example, complained that squatters had converted the foreclosed property abutting his home into a "stash for drugs."[50] Although these effects spill over to the entire neighborhood, their costs to the city may be—at least in part—accounted for by direct evidence of police responses to foreclosed addresses.[51]

Statistical analysis can also quantify the direct costs of police and fire-fighting services associated with foreclosed properties. For example, researchers looking at Baltimore developed a model to estimate the number of additional minutes that public safety officers have spent responding to vacant and unsafe properties on a block-by-block basis. The study determined that the city spends an additional $1,472 on public safety for each vacant property that it has designated as "unsafe."[52]

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[48] Immergluck & Smith, *supra* note 33, at 59.

[49] *See* Baltimore Compl. at ¶¶ 311–19.

[50] Decl. of Keisha Brooks at ¶ 7, Baltimore Compl., ECF 176–6.

[51] *See* Baltimore Compl. at ¶¶ 9–10, 119–308.

[52] Bob Winthrop & Rebecca Herr, *Determining the Costs of Vacancies in Baltimore*, Gov't Fin. Rev., June 2009, at 39.

Direct costs to public safety from vacancies in Baltimore:[53]

	Additional Minutes	Cost per minute	Total Costs
Police	445	$2.25	$1,000
Fire	13	$3.42	$472
Total			$1,472

The foreclosure epidemic has brought widespread—and foreseeable—blight to neighborhoods with vacant and abandoned homes, particularly where they cluster due to patterns of housing discrimination. Without maintenance and supervision, abandoned homes fall into unsightly disrepair and, eventually, ruin.[54] Abandoned homes also attract squatters, trash dumping, vermin, and fire.[55] The impact to neighboring residents' health and safety is substantial. In Baltimore, bank-foreclosed homes have become vectors for rodent infestation of adjacent properties. Despite the city's eradication efforts, rats have attacked neighboring dogs, and even children.[56] Neighbors of bank-foreclosed properties must also contend with odors from trash dumping and flooding

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[53] *Id.* at 40.

[54] Apgar, *supra* note 23, at 21.

[55] Decl. of Genevieve Matthews at ¶ 4, Baltimore Compl., ECF 176–5.

[56] Decl. of Nona Evans at ¶ 5, Baltimore Compl., ECF 176–9; Decl. of Stephen Faison at ¶ 7, Baltimore Compl., ECF 176–11; Decl. of Bridget Ross at ¶ 7, Baltimore Compl., ECF 176–13.

from broken pipes.[57] Mitigating blight is a Sisyphean task, and even cities that have devoted substantial resources to these efforts have found it difficult to contain the damaging effects of concentrated foreclosures.

Many of these municipal expenses can be detailed with specificity, and traced directly to the discriminatory lending practices that caused them. In the course of its FHA suit against Wells Fargo, for example, Baltimore provided a list "of each of the municipal services provided by Baltimore at every vacant Wells Fargo foreclosure property," including inspections and repair of dangerous code violations, and fire and police dispatches.[58] The City also provided an illustrative list quantifying the cost of corrective measures it assumed for bank-foreclosed properties.[59]

Municipal expenditures to mitigate the effect of discrimination-induced foreclosures are concrete, direct, and quantifiable. The FHA—and this Court's precedents—do not require more from plaintiffs seeking to remedy the harms of discriminatory housing practices. In sum, because "[t]he injuries suffered . . . are precisely those described in *Gladstone*," cities today, "like the Village of Bellwood, Illinois in *Gladstone*, ha[ve] standing" to seek redress for the economic consequences of discriminatory lending practices. *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1095 (7th Cir. 1992).

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[57] Decl. or Bridget Ross at ¶¶ 6–8, Baltimore Compl., ECF 176–13; Decl. of Stephen Faison at ¶ 6, Baltimore Compl., ECF 176–11.

[58] Baltimore Compl. at ¶¶ 119–308.

[59] *See* Supplemental Decl. of Jason C. Hessler, Baltimore Compl., ECF 176–19.

CONCLUSION

This Court should affirm the judgments of the court of appeals.

Respectfully submitted,

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